AD 424000

Peaceful Settlement of International Disputes in The Communist Bloc

by

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SEPTEMBER 1963

Arms Control and Disarmament Agency, Washington, D. C.

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This study was written under contract with the United States Arms Control and Disarmament Agency. The ideas and conclusions presented herein are solely those of the author. They do not necessarily correspond to those of the Agency or of any other department or agency of the United States Government.

September 1963

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Nearly twenty years of Soviet influence over countries in Eastern Europe and in the Far East have produced a combination of powers welded into a political and economic unit, which is generally considered a permanent fixture in the international reality of our days.

The march of the entire Bloc toward a common future is assisted by the great number of bilateral and multilateral treaties and agreements, frequently establishing permanent institutions, channelling the efforts of the communist countries toward the same ends. Such agreements provide formal links in the fields of trade, military security, transportation, communications, law, and nuclear research. In addition, there is a mass of minor agreements, forming a vast network of bilateral committees, commissions, boards, etc.

All these provide a general background of cooperation and coordination which makes for cohesion of the Bloc and contributes to the general climate in which the settling of disputes proceeds.

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The Soviet attitude toward the use of judicial processes for settling international disputes with the free world is one of suspicion. In their view, the rule of law among capitalist countries reflects the dominance of a class, hence it is quite impossible to expect that international judicial institutions would be capable of objective appraisal and would produce an objective and impartial decision.

In the eyes of Soviet scholars, diplomatic negotiations represent the most important and sure channel of settling disputes with the capitalist states.

In the Soviet view a feature distinguishing relations between socialist countries from those in the international community at large is that intra-bloc relations are determined by the fact that members are socialist states. Inasmuch as their internal policy is aimed at the elimination of economic exploitation, so in international relations socialist states respect the independence and sovereignty of other nations. Thus, to them, the system of relations within the Communist Bloc is law of a higher type than that under judicial authority.

In relations within the Bloc, a highly standardized system of international tribunals of arbitration has jurisdiction in all disputes arising out of trade and commerce. Mixed commissions are responsible for settlement of claims arising out of cooperative actions of administrative authorities on the lower levels, or the presence of Soviet troops on the territory of other Communist Bloc states. Important jurisdiction belongs to the administrators of formal bodies, such as the Warsaw Treaty Organization, the International Railway Conference, and the Institute of Nuclear Research.

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Arbitration is not widely applied in the Communist Bloc in settling disputes. Of the three multipartite treaties which call for arbitration in trade disputes, only one also provides for the creation of a special tribunal, and none of the three applies to the entire Bloc.

The first of these was concluded in 1955 by the shipping administrations of the Danubian states.

The Council for Mutual Economic Aid worked out an international code of commerce, effective January 1, 1958, under the name "General Conditions of Delivery."

The latest multilateral agreement is the "International Arbitration Court for Maritime and Cabotage Shipping in Gdynia." There is a real difference between the nature of the Gdynia agreements, which established the first truly international tribunal of arbitration, and the other two, which merely introduced the duty to arbitrate.

2. Arbitration Clauses in Bilateral Agreements

A great number of bilateral agreements have been formed, dealing with various aspects of commerce. In addition to laying down general conditions for the conduct of trade, they give effect to the rule that foreign trade is a governmental monopoly which marshalls national resources according to national economic plans. Consequently, arbitration of disputes is also designed to facilitate the flow of intra-bloc trade and assure proper performance of mutual obligations.

IV. ARBITRATION TRIBUNALS

1. Organization

Whatever their specialization, e.g., admiralty cases, all arbitration tribunals in the Bloc are characterized by the high degree of expertise of their personnel, both in the legal field and with regard to commercial practices.

Architects of the Soviet judicial system were convinced that impartial courts were a bourgeois illusion, and that in a socialist society courts should be organized primarily as tools of political and social action. Later, when the progress of industrialization called for a more sophisticated mechanism of dispute settling, this was found in the institution of arbitration boards.

2. Jurisdiction

Under the General Conditions of Delivery of 1958 and the Danubian Shipping Agreement, disputes concerning foreign commerce between members of the Council for Mutual Economic Aid are subject to compulsory adjudication by an arbitration tribunal. The general rule is that the tribunal of the defendant has jurisdiction. In agreements involving states of the Communist Bloc, but not limited to countries of the Council for Mutual Economic Aid, no such compulsory jurisdiction is provided for. To initiate proceedings in the Gdynia Court, a previous agreement between the parties is necessary.

3. Procedure

The proceedings of an arbitral tribunal consist of two phases, preliminary and that going to the merits of the case. Hearings are generally public, full records are kept, and parties may have legal representation. In general, proceedings before Communist arbitration tribunals are a fair imitation of those before European courts of law.

V. MIXED COMMISSIONS

1. General Survey

The use of Mixed Commissions is exclusively confined to Soviet relations with the Communist countries with which it remains in close contact. These commissions are not bound by procedural rules and can proceed expeditiously, primarily through informal negotiations.

Such Mixed Commissions are provided for in the so-called status of forces agreements in connection with the presence of Soviet troops in Hungary, East Germany, and Poland. Other areas served by Mixed Commissions are Danubian navigation, Black Sea fisheries, and enforcement of joint frontier regimes.

2. Status of Forces Agreements

Following the Polish and Hungarian revolts, the Soviets felt a new understanding should be reached concerning troops on the territory of Warsaw Pact powers and concluded status of forces agreements. Mixed Commissions were named competent to deal with claims in which material damage to the host country is caused by military units on active duty and by their dependents. The treaties provide for settlement of disputes by diplomatic negotiations if the Mixed Commissions fail to reach a solution.

3. The Danubian Regime

The Navigation Convention of August 1948 provided for the administration of the Danubian waterway which consisted of the representatives of the riparian states. Experts on Danubian problems from each of the litigating parties and a third neutral party make up conciliation commissions which act primarily as a platform for negotiations.

4. Black Sea Fisheries Mixed Commission

This agreement provided for an administrative body for coordination of national economic plans as regards Black Sea fisheries. Its proposals, in order to become binding, must be accepted by the parties concerned.

5. Frontier Commissions

Such Mixed Commissions consist of so-called frontier commissars and their deputies, appointed by higher authorities. Sessions to settle claims are held periodically and may be arranged for by simple invitation. Disputes which cannot be settled are referred to the ministries of foreign affairs, to be dealt with through diplomatic channels.

VI. DIRECT NEGOTIATIONS

In spite of frequent doctrinal reorientations as to the nature of international law, Soviet treatises maintain a constant line that direct diplomatic contacts and conferences represent the most efficient channel for resolving international conflicts, and that the institutional approach as it operates in the contemporary international community merits little confidence.

This emphasis on diplomatic negotiations is a logical consequence of the Soviet absolute concept of national sovereignty, which they consider forms an essential bulwark against the political and economic penetration of foreign capital. This explanation, however, has no application in intra-bloc relations, as their doctrine holds that cooperation between socialist states cannot result in a threat to the sovereignty of the Bloc countries.

VII. DISPUTE SETTLING WITHIN THE FRAMEWORK OF THE BLOC ORGANIZATIONS

In the mechanics of the intra-bloc organizations the principle that all power comes from the people means there are no hard and fast rules as to the division of responsibility among the various bodies administering an intra-bloc institution. Member rights have been infringed upon by the administrative mechanism of the organizations, which is able to make decisions in the name of all member nations virtually without their participation.

Typical in this respect is the Warsaw Treaty Organization. Although a Political Consultative Committee, with representatives from each member state, was formed for the purpose of examining questions arising from the operation of the Treaty, the group has little authority in practice.

The main feature of the new organization is the close integration of the joint forces into the command system of the Soviet Army. A line of direct subordination between the Soviet Minister of Defense and the national military establishments of the other member nations results in tight control by the Soviet Union.

Vast powers of the administrative officers also characterize the setup of two other important institutions in which all twelve members of the Bloc are associated. The

International Railway Conference's authority to settle claims for losses and damage to goods in international transit is greatly limited by special instructions for settlement of such claims for Soviet citizens. The operation of the United Institute of Nuclear Research is highly reminiscent of the Warsaw Treaty Organization. The director is Soviet and the operations are directly controlled by him.

VIII. PARTY DIRECTORATE OF THE BLOC

The Cominform, the vehicle the leaders of the Bloc used to acknowledge their ideological as well as political alignment under Soviet leadership from 1947-1955, was never politically significant. The Soviet Union's rapprochement with Yugoslavia in 1955 sounded its death-knell since the Cominform had been used as the major forum to condemn Yugoslavia in 1949.

The crisis of the revolts of 1956 demonstrated the need for an ideological and political clearing house on the highest party level. A meeting for this purpose was held in Budapest in January 1957, but the declaration signed there marked dissension rather than unity.

The ideological bone of contention was the use of the new term "proletarian internationalism." The new party-line twist was to signify that the principle of non-intervention was not violated if one socialist state supported the regime of another in its internal fight with reaction. The matter was resolved in November 1957 by acceptance of all twelve ruling parties of the new principle.

The conference in meetings to follow adopted new policy on economic integration, agricultural problems, and the German Peace Treaty.

In the Soviet view, two systems of international law coexist. Soviet doctrine on the special character of intra-bloc relations may make it impossible to adopt practices among the Communist countries to their relations with the free world.

SUPPLEMENT

AREAS OF TENSION IN THE SOVIET BLOC

A supplement to this study gives summaries of some of the most significant disputes between countries of the Communist Bloc, including some as yet unresolved. These specific examples cover territorial, minority, repatriation, and border problems, and problems in the economic sphere.

The general conclusion can be drawn from examination of this material that settlement of conflicts is primarily dictated by the general attitude of the Soviet Government toward the issues at stake and the parties to the dispute.

The foregoing summary was prepared by the Reference Research Staff, Arms Control and Disarmament Agency.

I. THE INSTITUTIONAL BACKGROUND OF THE SOVIET BLOC

Nearly twenty years of Soviet influence over countries in Eastern Europe and in the Far East have produced a combination of powers, welded together by a variety of forces into a political and economic unit, which is generally considered a permanent fixture of the international reality of our days. Its unity, in the minds of its leaders, is assured by the identity of the political, social, and economic regimes under which these countries live; by their allegiance to the same philosophical outlook, which shapes their policies; and finally by the very laws of history which lead the Communist countries toward a common future. Khrushchev, speaking to the Twentieth Congress of the CPSU (1956) forecast the future of the Communist countries under Soviet leadership as the common movement of the entire Bloc. He rhetorically asked whether ".... one of the socialist countries will attain communism .... while the other countries are left somewhere struggling in the early stages of building socialist societies?" He answered that

> This prospect is highly improbable if one considers the laws governing the economic development of the socialist system. This is because laws of development unknown to human society in the past operate in the socialist economic system .... The law of planned, proportional development operates in the socialist economic system, with the result that formerly economically backward countries rapidly make up for lost time and raise their economic and cultural levels by drawing on experience, cooperation, and the mutual assistance of other socialist countries. Thus the economic and cultural development of all the socialist countries is evened out.1/

This march toward a common future is assisted by the great number of bilateral and multilateral treaties and agreements, frequently establishing permanent institutions channelling the efforts of the Socialist Commonwealth of Nations, as it is sometimes called,2/ toward the same ends.

It is sometimes stressed that most of the multilateral arrangements are of fairly recent origin, and that the demise of Stalin forced the Soviet leadership to adopt a system of formal links tying various Communist nations to the Soviet center. However, it is only fair to state that the foundations of present-day collective arrangements were laid under the personal rule of Stalin.

Thus the first East European Railway Convention was signed on October 13, 1947;3/ the Convention of Danubian Navigation, which established Soviet control of this important international waterway, was concluded on August 17, 1948;4/ and the Council of Mutual Economic Assistance, which now represents the most important channel of Soviet influence in the Socialist Commonwealth of Nations, came into being on January 25, 1949.5/ Effective January, 1951, the Railway Convention of 1947 was supplemented by a Convention on Railway Transport of Goods and Persons, which extended the application of the arrangements of 1947 to the Far East; the 1947 arrangements had been limited to Eastern Europe and the Soviet Union.6/

Also, in the formative years of the Communist Bloc a system of bilateral military alliances came into being, initiated by a pact with Czechoslovakia in 1943, and followed in 1945 by alliances with Yugoslavia and Poland. In 1947 similar treaties were concluded with Rumania, Bulgaria, and Hungary. The only Communist country which at that time had no direct alliance with the Soviet Union was Albania, which had entered into a political and military alliance with Yugoslavia. The system of military alliances also extended into Asia. In 1946 a military treaty was concluded with Mongolia, and after the collapse of the Chiang Kai-shek regime in 1950, with China.7/

In the same period, commercial treaties were concluded establishing general conditions of trade and commercial relations between the Soviet Union and other Communist countries.8/

Almost simultaneously, during the lifetime of Stalin, feverish legislative activity in various Eastern European satellite countries brought about a degree of unification in various important fields of law. While it is beyond the scope of the present report to list in detail the various codes of adjective and substantive civil and criminal law, the reform consisted of the adoption of Soviet models of legislation by the legal systems of the Eastern European countries. Soviet law, the law of a country with experience in the socialist management of its economy, and with an appropriate social structure, was a source of inspiration for the legislators and drafters of the codes of the socialist countries in Eastern Europe. The legal integration of Eastern Europe subsequently created a proper climate for the conclusion of an extensive network of treaties dealing with various legal matters such as legal assistance, problems

of dual nationality, the regime of aliens, the execution of judicial decisions, extradition, and inheritance.

After the death of Stalin, formal ties between the countries of the Bloc were strengthened by the creation of a multilateral defense system which was a Soviet replica of NATO. The Warsaw Pact, concluded on May 14, 1955, provided for a unified command of the Warsaw Pact forces and for the political organization of the participating powers into a Political Consultative Committee to discuss the political and military situation in Europe.9/ Simultaneously, greater emphasis was placed on multilateral action in promoting economic cooperation between the countries of the Soviet Bloc. The Danubian regime, with its various organizations, was expanded and revitalized, and the Council for Mutual Economic Aid assumed direct responsibility for promoting international trade, investment activities, and coordination of various industries through specialization of the countries in those production lines they could do best. One of the important achievements of the Council for Mutual Economic Aid was the organization of a general clearing system, with the cooperation of the national banks of the member countries, to equalize the accounts of trading partners on a multilateral basis.10/

Under the auspices of CEMA, in the course of 1959, plans were made and agreements concluded for the construction of a pipeline to transport crude oil to the western confines of the Soviet Bloc. This pipeline orginates in the TransVolga districts, crosses European Russia, and splits into two branches in Byelorussia. The northern branch supplies oil to Poland and East Germany; the southern branch carries it to Hungary and Czechoslovakia.11/

In the post-Stalin years three additional organizations, this time uniting all countries of the Sino-Soviet Bloc, were created. In June, 1956, a conference of all twelve members assembled in Sofia (Bulgaria) and established an international railway administration to administer the Railway Convention of 1950. The statutes of the Administration were adopted during the second session of the Bloc in Peking (1957). The highest body in this new organization is the Council of Ministers of Railway Transport of the member countries. Between the sessions of the Council, it is directed by an executive committee consisting of junior representatives of the railway administrations, assisted by a committee of experts and commissions in charge of the various areas of responsibility. The purpose of the organization is to speed up and facilitate the transport of goods

and persons through closer cooperation between the national railway administrations, technical developments, and the simplification of frontier and custom formalities. Since January, 1951, the entire network of the national railway systems has operated on a unified international tariff system.12/

In December, 1957, the Ministers of Communication of the twelve countries convened in Moscow. They worked out a plan for the cooperation of the national communication administrations in electronic techniques, radio, television, telegraph, and telephone. They limited themselves to establishing principles of cooperation and coordination of various activities. No permanent organization was established and only periodic conferences of the representatives of national administrations were provided for.13/

As a reaction to the creation of the Center for Nuclear Research in the West, which refused to admit Soviet scholars, representatives of the twelve Bloc countries established a United Institute for Nuclear Research in March 1956. In September (20-28) of the same year these national representatives adopted the statutes of the Institute, which provided for an elaborate organization and for its administration. The Institute is headed by a conference of the representatives plenipotentiary of the participating nations. This conference has the power to amend the statutes, appoint the director, plan the construction, and fix the budget proposed by the director.

The research program is the responsibility of the scientific council which consists of the scientific representatives of the member nations. It convenes twice a year and hears the reports of the director and the scientific committee, a standing body which assists the director. Administration is in the hands of the director, assisted by two deputy directors and a staff. The scientific personnel of the Institute are delegated by the member nations, according to an appropriate key.14/

In addition to these multilateral channels of cooperation, and all those bilateral agreements which repeat with great monotony various provisions and formulas for coordination, there is a mass of minor agreements tying the countries of the Communist Bloc into all sorts of common actions. These are reflected in a variety of bilateral organizations resulting in a vast network of bilateral committees, commissions, boards, etc., which preside over various common activities. Mixed trade committees explore the possibilities of increasing and

facilitating imports and exports; cultural cooperation committees are similarly engaged in the field of cultural exchanges; and delegations from the national academies of science deal with technical problems. All these provide a general background of variegated channels of cooperation and coordination which add to the cohesion of the Bloc, and contribute to the general climate in which the settling of disputes proceeds.

II. DISPUTE SETTLING: GENERAL SURVEY

The Soviet attitude toward the various methods for settling international disputes in relations with the free world is full of reserve. In particular, Soviet authorities are suspicious of judicial processes for settlement of disputes with reference to the legal rule. In their view the rule of law reflects the dominance of a class, but in international relations with capitalist states only partly, inasmuch as the Soviet Union is involved and is able to assert its point of view, representing a correct class concept. Hence it is quite impossible to expect that international judicial institutions or arbitration tribunals would be capable of objective appraisal of the issues in dispute and would produce an objective and impartial decision. Consequently, diplomatic negotiations, in the eyes of Soviet scholars, represent the most important and sure channel of settling disputes with the capitalist states.

In relations between the socialist states, methods for solving conflicts of interest and policy are far more variegated. A highly standardized system of international tribunals of arbitration has jurisdiction in all disputes arising out of intra-bloc trade and commerce. Mixed commissions are responsible for the settlement of mutual claims in cases involving arrangements calling for the cooperation of the administrative authorities on the lower levels and resulting either from the existence of common frontiers or the presence of Soviet troops on the territory of other Communist Bloc states. Important jurisdiction belongs to the directors and managers in charge of administration of common institutions, such as the Warsaw Treaty Organization, the International Railway Organization, and the Institute of Nuclear Research. On several occasions international treaties refer to direct negotiations as the measure of last resort either if all other methods fail, or as the primary channel to settle disputes between the members of the Bloc.

III. TREATY FRAMEWORK OF ARBITRATION

1. Multilateral Agreements

Arbitration is not widely applied in the Communist Bloc in settling disputes between its members. It is an important method for resolving conflicts of interest in foreign trade and commercial relations, due primarily to the technical and frequently legalistic nature of disputes of that type. Of the three multipartite treaties which call for arbitration in trade and commercial disputes, only one also provides for the creation of a special tribunal which is given jurisdiction in the same treaty.

None of the three treaties applies to the entire Bloc. Only the Eastern European Communist states and the Soviet Union feel that a general regime of adjudication would be practical and of value for their cooperation.

Chronologically, the first of these treaties was concluded between the shipping administrations of the Danubian states and signed in Bratislava on April 26, 1955. It concerned towing, assistance to ships and persons in distress, and harbor administration and agency. Article 70 provided:

> Shipping administrations participating in the present agreement shall adopt proper measures for the peaceful settlement of all disputes which may arise in the execution of the present agreement or in connection with all related matters. Disputes which are not peacefully settled shall be subject to arbitration--jurisdiction of the general courts in the country of the defendant being excluded. The parties may also agree that an arbitral tribunal of another country shall be competent to adjudicate their disputes.15/

This provision uses the term "peaceful settlement"not to contrast it with the use of force or threat of force, but with formal litigation. This is a meaning somewhat different from the general use of that term, since normally arbitration is considered to be a method of peaceful settlement.

In the fall of 1957 the Council for Mutual Economic Aid worked out and submitted for application by its members as of January 1, 1958, an international code of commerce, under the name "General Conditions of Delivery." Article 65 stated:

> All disputes shall be subject to arbitration, the jurisdiction of general courts being excluded, in an arbitral tribunal established for such disputes in the country of the defendant or by agreement of the parties, in a third member country of the Council for Mutual Economic Aid.16/

General Conditions of Delivery of 1958 applies only to the trade relations between the members of the Council; i.e., trade between the USSR, Albania, Bulgaria, Czechoslovakia, Hungary, Rumania, and Poland. Thus there is no general treaty of arbitration concerning such disputes between the Council of Mutual Aid countries and the rest of the Communist Bloc.

In the initial months of the application of this code there was some doubt as to its legal nature. It was hailed as a convenient instrument for easing the formalities of foreign trade relations; however, it was also claimed that legally it had no binding force unless specially invoked in a contract concluded by the parties.17/ As time went on it was generally recognized that the General Conditions represented an international agreement, and therefore constituted a public law of the international relations between the member countries of the Council for Mutual Economic Aid which permitted departure from its provisions only when expressly provided for in its regulations.18/

In support of this thesis it was pointed out that General Conditions of 1958 have replaced a system of bilateral agreements which were in force between the individual countries of the Sino-Soviet Bloc. These bilateral agreements were based on a recommendation of the Council for Mutual Economic Aid of 1951 under the title "General Unified Commercial Conditions of Contracts of Mutual Deliveries between the Member Countries of the Council for Mutual Economic Aid."

The real source of authority of the General Conditions of Delivery of 1951 was Soviet practice. Soviet trading institutions adhered to the 1951 Conditions of Delivery in all bilateral agreements with the effect that they were generally followed in the Communist Bloc.19/

While the 1951 version was understood to have only a facultative authority, either when invoked in contracts or in

the bilateral agreements, the 1958 version of the Conditions of Mutual Deliveries was obligatory.

It is somewhat difficult to establish the legal criteria by which Soviet and satellite jurists distinguished between the 1951 and the 1958 sets of rules. Both have the form of the recommendation of the Council, and have received no additional ratification. Practice, however, clearly establishes the difference between the two, and it now seems that the resolutions of the Council in the matter of trade regulations at least have a general application, requiring no incorporation into a separate agreement concluded between individual Bloc countries. However, once the international agreement character of such resolutions of the Council for Mutual Economic Aid is recognized, it is easy to see that in view of the multilateral character of the trade between the Bloc countries it is logical to insist upon strict adherence to the Conditions of 1958.

The latest of the multilateral agreements establishing arbitral jurisdiction for disputes arising out of international commerce is the "International Arbitration Court for Maritime and Cabotage Shipping in Gdynia." This was established by the chambers for international commerce of Czechoslovakia, East Germany, and Poland on July 17th, 1959. It has jurisdiction in all disputes concerning the activities of the shipping organizations of the three countries, with the exception of litigations arising from labor relations which come under the domestic courts of the contracting parties.

The Gdynia tribunal is the product of the close cooperation of the three countries in the field of international shipping. Czechoslovakia, a landlocked country, has its home ports in Polish and East German harbors which permits it to maintain a merchant marine and to ply trade under its own flag. The three countries handle a good deal of shipping delivered at Baltic ports in transit to other European countries of the Communist Bloc. Furthermore, Polish and East German shipyards serve international shipping in the Baltic Sea.

The Gdynia Tribunal is an elaborate and well-planned affair. Its organization and operation were carefully provided for in a series of agreements which include:

1. An agreement on the creation and maintenance of the International Arbitration Court in Gdynia;

2. Rules of Procedure;

3. An agreement on costs of proceedings;

4. An ordinance on the honorariums and fees of the members of the Arbitration Court; and

5. An additional protocol regulating various incidental problems.[20]

There is a real difference between the nature of the Gdynia agreements and the two other multilateral treaties. The Gdynia agreements have established the first truly international tribunal of arbitration of the Communist Bloc, while the Danubian shipping agreement and General Conditions of Delivery only introduced the duty to arbitrate, in disputes arising out of their commercial relations.

2. Arbitration Clauses in Bilateral Agreements

The general arbitration system consisting of various arbitral bodies organized by the countries of the Communist Bloc, and of the Maritime Tribunal of Gdynia is related also to a great number of bilateral agreements which contain provisions on arbitration. These treaties deal with various aspects of economic cooperation between the members of the Bloc in the fields of foreign trade and commerce, shipping, fishing, and assuring safety at sea. On the one hand they establish general conditions for the conduct of trade and the maintenance of commercial relations between the socialist countries, and on the other hand they give effect to the rule that foreign trade is a governmental monopoly established to marshal national resources according to the national economic plans. Such plans are set up for each country, providing the quantities of goods to be exported and imported, and determining the amount of services to be rendered in shipping, banking, transit through ports, harbors and railway lines, loading, unloading, haulage and, in short, for all activities which constitute an integral part of the international circulation of goods and services.

In relations between the members of the Bloc, foreign trade and the activities of various governmental agencies represent both the fulfillment of international obligations to reach predetermined targets in the export and import of various commodities in relation to domestic economic plans, and in relation to overall plans aiming at the coordination of economic activities, and specialization of individual countries according to the plans for the distribution of labor worked out under the auspices of the Council for Mutual Economic Aid.[21]

Under those conditions performance of the members of the Communist Bloc is not merely a matter of fulfilling mutual obligations as determined by the bilateral delivery agreements, but of success or failure of the general plan for the entire bloc of countries which are members of the Council. Consequently arbitration of disputes is also designed to maintain the flow of deliveries, remove bottlenecks in the intra-bloc trade, and assure proper performance of mutual obligations.

International treaties and agreements containing provisions on arbitration of disputes fall into two categories. In the first belong all those agreements which establish a legal framework for business transactions involving imports and exports of goods and their transit in intra-bloc trade, usually styled trade and navigation conventions.

By 1961 there were seventeen such agreements in force between the members of the Sino-Soviet Bloc, the majority of them containing regulations concerning arbitration. In chronological order, they were listed by a Soviet author as follows:

USSR - Poland (July 7, 1945)
USSR - Romania (February 20, 1947)
Czechoslovakia - Poland (July 4, 1947)
USSR - Hungary (July 15, 1947)
USSR - Czechoslovakia (December 11, 1947)
USSR - Bulgaria (April 1, 1948)
USSR - German Democratic Republic (September 27, 1957)
USSR - Mongolia (December 17, 1957)
USSR - Democratic Republic of Vietnam (March 12, 1958)
USSR -Chinese People's Republic (April 23, 1958)
German Democratic Republic - Democratic Republic of Vietnam (March 7, 1959)
Czechoslovakia - German Democratic Republic (November 25, 1959)
Bulgaria - German Democratic Republic (July 16, 1959)
Albania - German Democratic Republic (October 8, 1959)
German Democratic Republic - Chinese People's Republic (January 18, 1960)
USSR - Korean People's Democratic Republic (June 22, 1960)

All these treaties, with the exception of those concluded by Poland with East Germany and Czechoslovakia, contain provisions stipulating that parties shall give effect to arbitral decisions in disputes arising from business transactions between their business organizations. None of the treaties provides an obligation to submit such disputes to arbitration.22/

Arbitral jurisdiction is dependent upon the formal contract provision between the commercial institutions of the countries concerned that disputes over the contract shall be submitted to arbitration, either generally, or specifically by a determined international tribunal. Such a condition may also be made in an additional agreement, in which case the form prescribed for the business transaction must be observed.23/

The second category of agreements with provisions concerning arbitration deals with the establishment of a common regime for all participating nations in certain broad areas of international trade and commerce and the regulation of matters which are marginal to the trade activities as such. In this category are three treaties concluded in the course of 1956 regarding the rescue of persons, ships, or aircraft in distress on the high seas. A USSR treaty with Poland and East Germany of July 7, 1956, organized and established the conditions for rescue operations in the Baltic.24/ A similar treaty with Red China and North Korea (July 8) established a regime to coordinate sea rescue operations in the high seas adjacent to the coastal areas of those three countries.25/ Finally, a treaty regarding rescue of ships and persons was concluded for the Black Sea by the three Communist Black Sea powers--the Soviet Union, Bulgaria, and Rumania.26/

While one of the purposes of the treaties was to establish a general regime equally applicable to the ships of the parties involved, and to those of other states, the primary function was to deal with mutual relations problems. The procedures established by the three agreements follow a single pattern. Rescue operations are undertaken on the basis of a so-called rescue contract, concluded, if possible, before rescue operations have begun. The rescue of persons is a matter of course and without charge. Rescue contracts are agreed upon between the persons in charge of the ship

and cargo involved and those commanding the rescue team. As a matter of course rescue contracts should provide for the jurisdiction of a court or of an arbitral body to decide disputes arising from the contract of rescue.27/

IV. ARBITRATION TRIBUNALS

1. Organization

In the great system of arbitration tribunals competent to deal with disputes arising from intra-bloc trade, some are especially designed to handle admiralty cases exclusively, which involve those complicated issues of law and fact governed by special maritime law. But whatever their specialization, all arbitration tribunals in the Bloc are characterized by the high degree of expertise of their personnel, both in the legal field and as regards commercial uses and practices.

In this aspect they differ radically from the common courts of the socialist states. The fact that the Soviet Union was laying the foundations for its system of courts at the time, when Soviet legislators had no idea of the legal problems which their judicial bodies would encounter, is mainly responsible for the role of the arbitration boards, tribunals, and courts, as they are differently styled in the Soviet Union and the other socialist states. Architects of Soviet courts were convinced that impartial courts were a bourgeois illusion, and that in a socialist society courts should participate in the reeducation and social reconstruction of a vast strata of the population. Courts, therefore, were organized primarily as tools of political and social action, and not as bodies capable of dealing with complicated issues of law and fact in an industrial society. When later the progress of industrialization called for a more sophisticated mechanism of dispute settling, this was found in the institution of arbitration boards, competent to settle disputes between various organizations in charge of the economic management of the country. While the Soviet regime felt that lawyers had no place on the benches of regular courts, it found them very useful in the arbitral system which has gradually developed since 1930, when the still important Maritime Trade Arbitration Tribunal was established.

The history of the dispute-settling institutions in the Soviet Union accounts for the characteristics of the entire mechanism for the administration of justice in the Soviet Bloc. It also explains why various arbitration boards

and tribunals act within a certain limited context of industrial or commercial activity. Without getting involved in the complicated history and organization of governmental arbitration in the Soviet Union and other socialist countries, it is enough to state that in the early 1930's two such arbitral bodies were established in the Soviet Union to settle disputes arising out of foreign trade--the Maritime Arbitration Commission and a Foreign Trade Arbitration Commission. They were affiliated with the All Union Chamber of Commerce (Vsesoiuznaia Torgovaia Palata) which was specially organized to promote trade relations with foreign countries; to supervise the progress of these relations, both as regards the fulfillment of the economic plan and the maintenance of proper standards of import and export; and the observation of proper trade usages and procedures. In addition the All Union Chamber of Commerce performed all those duties which are traditionally carried on by similar institutions in the free world. It assists in determining the quality of the goods delivered by the importing or exporting firms and checks their compliance with the terms of the contracts, issues attestations as to the trade usages in the Soviet Union, etc., etc. Although styled as a social organization, the Soviet Chamber of Commerce is a government agency par excellence. It is an association of various governmental agencies for imports and exports and other international commerce. Its activity is the result not of incorporation but of statutory authorization, not of the common decision of its members but of instructions from the Ministry of Foreign Trade. Other socialist countries have organized their chambers of commerce along similar lines.[28]

The Maritime Arbitration Commission was set up in 1930.[29] The Foreign Trade Arbitration Commission, which has jurisdiction to adjudicate in all commercial disputes except admiralty cases, was established in 1932.[30] The Court of Arbitration of the Polish Chamber of Foreign Trade was organized pursuant to Article 5 of the Decree of September 28, 1949, concerning the organization of the Polish Chamber Foreign Trade.[31] The Court of Arbitration of the Czechoslovak Chamber of Commerce functions pursuant to Article 6 of the Ordnance issued jointly by the Ministers of Foreign and Internal Trade.[32] The Court of Arbitration of the East German Chamber of Commerce was set up in 1954,[33] while the Hungarian Court of Arbitration came into being in 1949,[34] and the Rumanian

Arbitration Commission in 1953. 35/ The Foreign Trade Arbitration Commission of the Bulgarian Chamber of Commerce was established by a decree of the Council of Commerce of February 4, 1952. 36/

Poland, East Germany, and Czechoslovakia maintain a Joint Maritime Court of Arbitration. Of the sea trading nations only Bulgaria and Rumania have no special institution competent to deal with admiralty cases.

Soviet arbitration commissions served as models for similar arbitral organizations in other Communist countries. Arbitration tribunals or commissions are affiliated with the national chambers of commerce or foreign trade, which are government agencies serving governmental bureaus in charge of foreign trade operations. As a rule, chambers of commerce appoint a panel of persons to serve as members of arbitration tribunals in case of dispute. The panel is a self-governing body whose members elect a presidium consisting of from three to four persons, which establishes an office and a secretary to handle all matters preliminary to the establishment of the particular Arbitration Tribunal to which a case is submitted. The presidium also exercises supervisory powers over the conduct of the members of the panel and has some disciplinary powers.

The size of the panel in various arbitral institutions and their composition tend increasingly to conform with the Soviet model. In some of the Eastern European countries, notably Poland, Czechoslovakia and East Germany, it was originally a large and unwieldy body. After a series of reforms in the rules of the arbitration tribunals in those countries, however, the number of panel members decreased. They now number fifteen on both Soviet commissions, thirty in Poland and East Germany, and fifteen in other Eastern European countries.

From this panel each of the two parties to a dispute select one arbitrator, and these arbitrators appoint an umpire to preside over the proceedings. In case the parties to a dispute are unable to elect their arbitrators, or they in turn are unable to agree on the person to be umpire, the presidium of the panel steps in and does whatever is necessary to compose a proper tribunal. 37/

The presidium of the panel of the Gdynia Tribunal functions somewhat differently. There the panel consists of members appointed by each contracting party, in equal numbers. Each party also appoints a member of the presidium and his deputy. These three together form a presidium, and each member acts as its chairman for one year.[38]

Arbitration tribunals usually consist of three members, unless the parties agree to have their case decided by one arbiter.

Although one can observe a movement towards the standardization of the satellite arbitration tribunals, which brings them closer to the Soviet pattern, at the same time the fact that arbitration tribunals for foreign trade no longer operate in political isolation has brought about a broader approach as regards their organization. This is particularly apparent in the nationality of the members of the arbitration tribunals. In early Soviet practice non-Soviet citizens in the employment of the government were, as a rule, active in foreign trade arbitrations. Later practice tended towards appointing only Soviet nationals to the panel of arbitrators.[39]

Quite a different tendency is visible in the practice of the arbitration tribunals of Eastern Europe. There the tendency was rather liberal, partly due to changing economic conditions and partly to the fact that they were no longer the only socialist countries in the world. This practice was formally acknowledged in the 1959 rules of the Polish Court of Arbitration, which expressly permitted the appointment of foreign nationals as permanent members of the panel.[40]

2. Jurisdiction

Under the General Conditions of Delivery of 1958 and the terms of the Danubian Shipping Agreement, disputes concerning foreign trade and commerce between the members of the Council for Mutual Economic Aid are subject to compulsory adjudication by an arbitration tribunal. The general rule is that the arbitration tribunal of the defendant has jurisdiction, unless otherwise agreed by the parties.[41]

In all situations where the jurisdiction of arbitration tribunals may extend also to foreign nationals no such compulsory jurisdiction, even in relations between the members of the Communist Bloc, was provided for. According to the treaties on the regime of the rescue of ships, the jurisdiction of arbitration tribunals must be established in an agreement included in the original contract or in a form required for the validity of the original contracts.

Similarly, the tripartite treaty between Czechoslovakia, East Germany, and Poland, which established an International Maritime Court in Gdynia, contains no provisions for submitting a specific category of disputes to its compulsory jurisdiction. The treaty declared the Court competent to entertain litigations, arising out of maritime commerce, regardless of the nationality of the parties or the national interests involved. This is not a court exclusively competent to consider the disputes between the parties to the treaty.

To initiate proceedings in the Gdynia Court a previous agreement between the parties, or an acceptance of its jurisdiction is necessary. The Gdynia Court Treaty also provides for the possibility of its being made competent to deal with any type of dispute relating to maritime commerce by an international agreement, in which case a special agreement would not be required. At any rate the Gdynia Court Treaty contains no jurisdictional clause similar to that to be found in the respective articles of the General Conditions of Delivery of 1958 or of the Danubian Shipping Agreement of 1955, which have generally ruled that unless a different agreemant is made by the parties the court of the defendant has jurisdiction.

After a good deal of experimenting with the organization and jurisdictional rules of the arbitration tribunals a general tendency toward uniformity and the standardization of jurisdictional provisions is clearly visible. As matters stand now, various arbitration tribunals located in the Bloc countries have merged into a fairly uniform system of courts which, though not subject to a central judicial authority or administrative regulation, follow common principles and serve the same overall purpose of promoting and speeding the flow of trade in the entire area. This has been achieved through the Soviet ability to make other members of the Bloc follow their procedures, and to shape intra-bloc commerce, not only in regard to the volume and lines of goods, but also to the legal forms of transactions. The authority of Soviet know how in matters of foreign trade found visible expression in the fact that Soviet arbitration commissions were on several occasions called upon to arbitrate disputes between the members of the Bloc in which no Soviet interests were involved, thus furthering the cause of unity and the cohesion of the Bloc.[42] This they could do as their rules of procedure do not exclude their jurisdiction in causes between third countries. While the rules of other arbitral tribunals make their services available to any country, within or without the Bloc, only Soviet institutions have handled disputes between third countries in any volume.

3. Procedure

The proceedings in cases submitted to the decision of an arbitral tribunal consist of two phases, the preliminary and thats going to the merits of the case. Before coming to a consideration of a case on its merits, all preliminary questions are resolved by the presidium of the panel. These include deciding the question of jurisdiction, receiving opening pieces of procedure, transmitting the claim to the defendant, inviting the parties to appoint the arbitrators and the arbitrators to select the president of the tribunal, and, if necessary, appointing the arbitrators if the parties have failed to select them, or the president if he has not been elected within a specified time. It also hears and decides party challenges of the members of the court or the validity of the grounds for refusal by the members of the panel to participate in the adjudication of the case. It may also declare the court incompetent for lack of jurisdiction if the parties have agreed to submit their case to another tribunal, or if there is no agreement between them and a given case does not come under a general treaty provision concerning arbitration.

Thus, the presidium exercises an important judicial function which includes in some cases the power even to render a final decision. According to the Polish rules the presidium may issue a final judgment if the respondent, in his reply to the opening steps of procedure, acknowledges the claim.

The German Rules of 1957 very ingeniously merge into a single whole the preliminary proceedings and the proceedings on the merits by making the president and the secretary of the panel of arbitrators the president and the secretary of the court, leaving to the parties the selection of two arbitrators to complete the tribunal.

The statement of a claim is a highly technical procedure. It should substantiate the statement concerning jurisdiction, define the claim, and list the evidence. If any of these are missing the party is given additional time to supplement the statement of claim. The responding party may challenge the claim, either on formal grounds or as to its substance. The respondent may also file a counterclaim which will also be a subject of decision in the case, unless it is already a subject of proceedings before another judicial or arbitral body.

As a rule the proceedings are conducted in the language of the country. However, in practice arbitral tribunals conduct proceedings in any international language and receive the procedure in any language, communicating them to the other

party in appropriate translation. The rules of procedure of all the Bloc countries provide for interpreters' services. The Polish rules of 1959 provide that a tribunal may decide, with the agreement of the parties, to conduct the hearings in English, French, German, or Russian, in addition to Polish, if this would expedite the case.

Hearings are oral and public, unless the parties ask to have their case heard in camera or the tribunal decides for other reasons to do so. Parties may be represented and accompanied by lawyers, who may plead their case in any language with interpreters present. Witnesses are heard in their own language and parties may make statements in their native tongue.

There are no rules of evidence except that admission of evidence is governed by the principle of relevance. The method of presentation and evaluation is left to the discretion of the tribunal. It is the parties' responsibility to submit evidence in substantiation of their pleadings. However the tribunal may seek additional evidence on its own initiative from foreign experts invited to submit opinions on technical questions of fact and interpretation of foreign law customs or usage.

Full records of proceedings are kept and are signed by the president and the secretary. In contrast with Anglo-American practice the president of the tribunal controls the proceedings. It is possible to appeal his rulings to the entire tribunal. In general, proceedings before Communist arbitration tribunals are a fair imitation of the proceedings in European courts of law.

Contrary to practice of commercial arbitration in the West, the rules of socialist arbitration tribunals require that awards, as well as dissenting opinions, be reduced to writing and include a full statement of the reasons on which they are based. They are comparable in form to the judicial decisions of the regular courts of justice in the West. They give the names of the parties and of the arbitrators, relevant facts, principal arguments submitted, analyses of the legal principles involved, reference to facts as established by evidence, and other data regarding various decrees made by the tribunal. They must also contain directives as to the execution of awards.

It is the duty of arbitral tribunals to offer the parties the possibility of settling their cases out of court or by a composition in court.43/

Some of the rules of procedure, in an effort to assure the successful completion of proceedings, provide for the appointment of alternate arbitrators and deputy presidents to sit in a case until the end of proceedings and substitute for a member of the court unable to fulfill his office. Polish rules of 1959 contain an interesting provision permitting the members of the presidium of the tribunal to participate in the proceedings and the final deliberations in chambers, without the right to vote but with the right to present their views and arguments. This provision seems to be designed to assure unity and cohesion in the judicial work of the arbitration tribunal.

There is no rule of precedent; however, it has been recognized that highly contradictory decisions would detract from the authority of the tribunal and frustrate its role of assuring uniformity in the methods of foreign trade procedures. High concern with the international effect of the judicial activity of arbitration tribunals was revealed by a discussion in Poland among experts dealing with various aspects of foreign trade within the Communist Bloc. Polish lawyers and economists were concerned with the departure of the East German arbitral tribunals from the rule otherwise uniformly followed in other courts of arbitration regarding the statute of limitations on claims in international commerce. The general practice was that longer terms of prescriptions provided for in the general civil legislation apply, and not strict brief time limits, used for the presentation of claims between government enterprises. It was felt that those shorter time limits would not be practicable in foreign trade relations. The East German Court insisted on shorter prescription terms in the interest of the progress of the commercial relations between governmental enterprises of the socialist bloc as a whole. It argued that their character is such that shorter time limits should apply. This controversy gave rise to a general discussion between various countries concerned of these and related issues on the ministerial level.[44]

V. MIXED COMMISSIONS

1. General Survey

The use of Mixed Commissions is exclusively confined to the Soviet relations with the Communist countries with which it remains in close contact. These Commissions are bodies which are not bound by procedural rules and can proceed expeditiously, primarily by way of informal negotiations between the representatives of the countries involved.

Such Mixed Commissions are provided for in the so-called status of forces agreements which determine various issues, such as mutual rights and obligations in connection with the presence of Soviet troops in Hungary, East Germany, and Poland.

A Mixed Commission was given regulatory functions and the power to settle disputes between the Danubian states relative to the navigation regime established by the Convention of 1948. A somewhat similar Mixed Commission was provided for in an agreement between the Soviet Union, Bulgaria, and Rumania concerning Black Sea fisheries. Finally, frontier agreements between the Soviet Union and its western neighbors provide for Mixed Commissions to enforce joint frontier regimes, mutual security in the frontier areas, disposal of frontier incidents, and settlement of claims for damages resulting from the official actions of either party.

2. Status of Forces Agreements

Mixed Commissions of the Soviet status of forces agreements represent the most important instance of this type of international body designed for the settlement of differences between the Soviet Union and other members of the Bloc. They have to deal with delicate problems arising from complex relations between the commanders of the Soviet military units and local authorities, members of the Soviet forces and their families and local populations, and all related issues which are liable to arouse controversy and litigation. Their purpose is, among other things, to restrain Soviet commanders from interfering in the national affairs of their host countries, and to regularize the movement of Soviet units and personnel, use of facilities, and other matters. Before the Polish and Hungarian revolts in the Fall of 1956 the Soviet Union considered itself free to move troops in the entire Eastern and

Central European area within its sphere of influence. This right was fully exercised in the Fall of 1956. When the Soviet-sponsored regimes in these countries were challenged, the Soviet Union moved important military forces into Poland, Rumania, and Hungary by land, respecting no frontiers and neither seeking permission from local governments nor authorization from the Warsaw Pact Council. Large formations were transported by sea to Bulgaria, and important troop concentrations appeared on the borders of Poland.

The Soviet declaration of October 30, 1956 brought to light some of the causes of tension in Soviet-satellite relations. It stated that until that time Soviet troops in Poland had been active as lines of communications troops for the Soviet forces in East Germany as a result of the Potsdam Agreement. The declaration also referred to some special agreements legalizing the presence of Soviet troops in Hungary and Rumania, which were concluded after the signing of the peace treaties in 1947. The declaration stated that the time had come, particularly in view of the Warsaw Pact (May 14, 1955), to arrive at a new understanding concerning the presence of Soviet troops in the territory of the Warsaw Pact powers:

> With a view to securing the mutual security of the socialist countries, the Soviet Government is ready to examine, with other parties to the Warsaw Pact, the question of Soviet troops stationed in the territory of those countries. In this the Soviet Government proceeds from the principle that the stationing of troops of one state, which is a party to the Warsaw Pact, on the territory of another member state should take place on the basis of an agreement among all the Pact's participants, in addition to the agreement of the state on whose territory those troops are stationed, or are planned to be stationed at its request.45/

In the subsequent period the Soviet Government concluded four status of forces agreements with Poland (December 17, 1956), East Germany (March 13, 1957), Rumania (April 15, 1957), and Hungary (May 27, 1957).46/ Of these, the Rumanian treaty is no longer in force, as during the 1958 meeting of the Political Consultative Committee of the Warsaw Treaty Powers, the Soviet Government announced (May 24, 1958) that it intended to withdraw the Soviet forces from Rumania.47/

The three extant agreements with Poland, Hungary, and East Germany follow a uniform pattern and deal with the following problems:

1. The strength and movement of the Soviet military forces in the host country;

2. The regime of the Soviet forces, individual soldiers, members of military families and civilian employees while on the territory of the host country;

3. Soviet control and use of military facilities on the territory of the host country;

4. Jurisdiction of local authorities in civil and criminal matters arising out of, or in connection with, the presence of Soviet troops;

5. Matter subject to the exclusive jurisdiction of Soviet authorities; and

6. Settlement of claims and disputes.

As a matter of principle, members of the Soviet forces, members of their families and civilian employees of the Soviet forces are under the local law and jurisdiction of local courts. According to Article 9 of the Polish Treaty:

> Problems of jurisdiction connected with the stay of Soviet troops on the territory of the Polish People's Republic shall be regulated in the following manner:
>
> 1. As a rule, Polish law shall apply and Polish courts, the prosecutor's office, as well as other competent authorities dealing with crimes and offenses, shall act in cases of crimes and offenses committed by persons forming part of the Soviet troops or members of their families on territory of the Polish People's Republic.
>
> The military prosecutor's office and the military courts of the Polish People's Republic shall be the competent authority to deal with cases of crimes committed by Soviet soldiers.
>
> 2. The provisions of paragraph 1 of this article shall not apply:
>
> (a) in cases when crimes or offenses have been committed by persons forming part of the Soviet troops or by members of their families only against the Soviet Union and also against persons forming part of the Soviet troops or members of their families;

(b) in cases when crimes and offenses have been committed by persons forming part of the Soviet troops while carrying out service duties.

In the cases defined in subparagraphs (a) and (b) Soviet courts, as well as other organs acting in accordance with Soviet law, shall be competent.

3. The competent Polish and Soviet authorities may request each other to transfer or accept jurisdiction in individual cases provided for in this article. Such requests shall be examined in a spirit of friendliness.

Thus the Soviet status of forces agreements have created a system in which two jurisdictions may be in conflict as to the adjudication of criminal cases. According to the terms of the treaty, Soviet judicial authorities have jurisdiction whenever only Soviet interests are involved. However, persons forming a part of Soviet troops (therefore not members of their families) may escape being tried in Polish courts if their offenses were committed while they were carrying out service duties, even when Polish nationals or institutions were the object of the criminal attack.

Claims for damages which cannot be settled amicably go either to a Mixed Commission composed of representatives of the two countries, which decides by unanimous vote, or to the courts of the host country. Mixed Commissions are competent to deal with claims in which material damage to the host country resulted from the actions or the neglect of the Soviet military units or their members on active duty, and in all cases when similar damage was caused to local institutions, citizens of the host country, or foreign citizens permanently residing in the host country. Similarly Mixed Commissions have jurisdiction in cases involving claims against Soviet military units as such.

In contrast, claims arising from actions or neglect of the members of the Soviet forces not on duty, or members of military families, belong to local courts. As a matter of principle the Soviet Government accepted liability for the payment of damages awarded by local courts in such cases (Article 13 of the Polish Treaty).

In return the host countries accepted liability for damages caused either to Soviet military units, their members, or members of their families by the institutions of the host state or its nationals (Article 14 of the Polish Treaty).

While in the territory of the host countries Soviet troops have the use of various installations and military establishments, which raises the problem of their maintenance, expansion, or the acquisition of new facilities. Special procedures were provided for the return of military establishments no longer needed by the Soviet military forces, and for the disposition of claims regarding the financial outlay for the building of new facilities or the expansion of old ones and for damages done to them. All these problems belong also to the Mixed Commissions which have been given broad powers to deal with various issues arising in the process of the execution and enforcement of the provisions of the Treaty.

According to Article 19 of the Polish Treaty:

> To settle problems arising in connection with the interpretation and implementation of this agreement and the agreements provided for in this agreement, a Polish-Soviet Mixed Commission is hereby appointed to which each of the Contracting Parties shall appoint three representatives.
>
> The Mixed Commission shall act on the basis of the rules adopted by it.
>
> The seat of the Commission shall be in Warsaw.
>
> When a Mixed Commission is unable to settle a question referred to it, this matter shall be settled through diplomatic channels in the shortest possible time.

3. The Danubian Regime

The Navigation Convention of August 18, 1948, signed in Belgrade without the participation of the Western Powers, established a new international body for the administration of the Danubian waterway under a new international regime consisting of the representatives of the riparian states. This convention provided for the solution of disputes between the parties by conciliation commissions (soglasytelnaia komissia). The Western draft of a Danubian Convention provided for the compulsory jurisdiction of the International Court of Justice. In the Communist version there was no room for adjudication by the World Court, and the judicial method was replaced by the investigatory and conciliatory service of a body of experts familiar with Danubian problems.

The jurisdiction of Danubian conciliation commissions is based on the 1948 Convention, and has no connection with the commercial arbitration under the 1955 Danubian Shipping Agreement, described above. The conciliation commission is attached to the Danubian Commission for the solution of disputes related to the administrative aspects of the Danubian regime. According to Article 45 of the Danubian Navigation Convention.

> Any dispute arising between the Parties to the present Convention concerning its application and interpretation, which has not been solved by direct negotiations, shall be transmitted on request of any of the disputants for the decision of a conciliation commission. The commission shall consist of one member appointed by each of the litigating parties and a third who shall be a national of a third Danubian state not involved in the dispute, appointed by the chairman of the Danubian Commission. If the chairman of the Danubian Commission is a national of one of the litigating parties, the appointment shall be made by the Commission.

There are no rules of procedure, and the method of arriving at the solution is to provide a platform for the negotiation of the issues involved with the participation of a neutral member. However, the decision of the Commission is final for the parties and binding upon them.48/

The conciliation commission's task is to bring about the composition of differences in the case. However, there is nothing to prevent it from making a decision by majority vote. This fact, and the presence of a neutral party, places this commission somewhere half-way between an arbitration procedure and a mixed commission in the manner of those provided for in the status of forces agreements.

In due course when the Danubian Commission, exercising its regulatory functions, produced additional technical rules for Danubian navigation, the conciliation commission, under Article 45 of the Danubian Convention of 1948, was declared competent to decide disputes concerning the interpretation and enforcement of the new rules. For instance, Article 81 of the General Rules of Danubian Navigation of June 2, 1951, provided that:

> Disputes regarding the construction of the articles of the General Rules of Danubian Navigation . . . shall be subject to the procedure provided for in Article 45 of the Convention of the Regime of Navigation on the Danube.[49]

4. Black Sea Fisheries Mixed Commission

Yet another type of mixed commission was established by the Black Sea Fisheries Agreement between the USSR, Bulgaria, and Rumania of July 2, 1959.[50] This agreement provided for the setting up of a mixed commission consisting of the representatives of each contracting party and their deputies, who take turns in presiding over the Commission's deliberations. The Commission is an administrative body and provides a platform for the mediation of the conflicting views and interests of the parties.

It drafts provisions regarding proper fishing methods, protection of marine life, coordination of national economic plans as regards Black Sea fisheries, protection of rare and useful types of fish, and initiates scientific studies concerning marine life in the Black Sea. It also has the duty to propose solutions for all issues and problems submitted to it by the parties to the Convention. (Article 9, point 6, of the Convention.)

The Commission does not have the power to make decisions or establish rules for the implementation of the Convention. Its function is advisory, and its proposals, in order to become law, require acceptance by the parties concerned.[51]

5. Frontier Commissions

A Soviet treatise on International Law, published under the auspices of the Academy of Science of the USSR, claims that the Soviet experimentation with mixed commissions to solve frontier problems represents a singular contribution of Soviet diplomacy to the preservation of peace and the amicable settlement of international conflicts. It quotes two earlier conventions concluded with Poland and Rumania in 1921, and a mixed commission for the solution of frontier disputes with Japan.[52]

Recently the Soviet Government again resorted to the same method to enforce a frontier regime with its Western neighbors. A frontier Convention with Poland was concluded on February 15, 1961,[53] and with Rumania on February 27, 1961.[54]

The purpose of these conventions was to establish a detailed frontier regime on both sides of the dividing line. A procedure was provided for the preservation of frontier markers, for joint periodic inspections of the state of the frontier, the use and maintenance of roads and railways which cross and recross the frontier line, regulation of hunting and fishing, exploitation of forests and mines, prevention of frontier incidents, prevention of illegal traffic of persons and smuggling, extradition of fugitives, and the handling of cases of persons not admitted to the territory of the other state owing to the lack of proper documents, etc.

Mixed frontier commissions were provided to deal with these various administrative matters. They consist of so-called frontier commissars and their deputies. They are appointed by the higher authorities, and their names and place in the frontier area are communicated to the other party. Frontier commissars, armed with proper papers, represent their countries and frontier administrations in all matters requiring common action, hold periodic conferences to review outstanding problems of common concern, and receive requests, complaints, and statements from the other party. With proper credentials, they and their deputies have the right to cross the frontier at specified points and have the right to submit claims and complaints to the commission and initiate procedures to solve the issues under dispute. They enjoy diplomatic immunity while engaged on official business in the territory of the other party.

Frontier commissars have the right to settle claims for damages due to frontier incidents and other causes resulting from the official action of the organs of the other party. Sessions to settle claims for damages are held periodically, but each frontier commissar may arrange for an extraordinary session by a simple invitation to the frontier commissar of the other party to a meeting in his territory.

Disputes which cannot be settled by the commissions are referred to the ministries of foreign affairs, to be dealt with through diplomatic channels. A dispute referred to higher authorities may be returned for local settlement with proper instruction from both parties.

VI. DIRECT NEGOTIATIONS

Soviet treaty practice provides ample evidence that direct negotiations represent, in the minds of Soviet diplomats, the most important method of settling disputes. Various treaty provisions establishing the jurisdiction of international bodies to settle disputes rule that recourse to that special method may take place only after direct negotiations have produced no result. In the Danubian Shipping Agreement of 1955 which provides that disputes should be subject to arbitral decision, the parties are obligated to employ first all other methods for the peaceful settlement of their differences. 55/ A similar provision in the Danubian Navigation Convention of 1948 provides that the conciliation commission should settle disputes which the parties are unable to settle in direct negotiations. 56/

Sometimes, as in the status of forces agreements or in conventions on the frontier regimes, direct diplomatic negotiations are provided for in case the Mixed Commissions are unable to reach a solution. There is here a presumption that higher authorities shall have more power to make concessions, or are better able to approach the problem from a new angle, thus making the solution of a dispute possible. 57/

Sometimes, a treaty between two members of the Socialist Commonwealth may even provide that disputes resulting from the particular convention shall be settled in direct negotiations. So, for example, the Soviet-Bulgarian Convention of 1957, on dual nationality, one of a series of similar agreements concluded by the Soviet Union with other Communist states in Eastern Europe, provided in Article 11 that "problems connected with the execution and construction of the present Convention shall be decided in diplomatic negotiations." 58/

Soviet internationalists also emphasize the importance of direct contacts and negotiations for the solution of international disputes. In spite of frequent doctrinal reorientations as to the nature of international law, and its various institutions for the promotion of peaceful relations between nations, Soviet treatises maintain a constant line that direct diplomatic contacts and conferences represent the most efficient channel for resolving international conflicts. The 1947 edition of International Law, which was the collective work of the top Soviet scholars of that time, discussed this viewpoint at length while emphasizing that the Soviet Government had little confidence in the institutional approach to dispute settling as it operated in the contemporary international community. 59/

In particular the activities of the Permanent Court of International Justice at The Hague, which functioned between the two wars, was the object of criticism, as the Court represented, in the minds of Soviet scholars, a typical

creation of the bourgeois society of nations. "The Soviet Union," a Soviet professor stated, "in view of the nature of international justice, adopted a restrained attitude toward international arbitration."60/

The 1951 edition of the same treatise by the Law Institute of the Academy of Science of the USSR affirmed that:

> ... diplomatic conversation represents the fundamental method for the solution of international disputes, both from the point of view of expeditiousness and from the point of its effectiveness as well. However, in the studies of bourgeois scholars this method has received slight attention.61/

Soviet scholars consider various institutions to clarify issues and to formulate solutions of international disputes as channels for direct negotiations. They recall that the Soviet practice of setting up mixed commissions for the solution of disputes of all types dates back to the early years of the Soviet regime in Russia.62/

Soviet scholars assert that modern diplomatic law contains no hard and fast rules as regards the form of diplomatic contacts. The manner of handling various issues in international relations depends exclusively on the personal arrangements of those who conduct the negotiations.63/

It is easy to see that this Soviet emphasis on diplomatic negotiations is a logical consequence of the absolute concept of national sovereignty which both Soviet practice and Soviet scholars share. Soviet governmental leaders and legal scholars believe that the institution of national sovereignty is one of the most important guarantees of national independence, economic penetration of foreign capital.64/

This explanation, however, has no application in intra-bloc relations, as cooperation between socialist states cannot result in a threat to the independence and sovereignty of the Bloc countries. And yet arbitration, though used to resolve a great mass of disputes, is applied to a very narrow segment of intra-bloc intercourse. To the Soviet mind, it is just not feasible that judicial settlements should be used for the great legal issues in the Socialist Bloc of Nations.

It seems, therefore, that Soviet mistrust of institutionalized dispute-settling is due to other causes. In the first place, it seems to be the result of Soviet inclination to consider international conflicts of interest in terms of large political issues of international relations. In the second place, Soviet leadership has little regard for the judicial process in general, and it would be quite inconceivable for them to rely on such process for the solution of political and social issues important to the public life of their own country.

VII. DISPUTE SETTLING WITHIN THE FRAMEWORK OF THE BLOC ORGANIZATIONS

The cohesion of the Soviet Bloc is greatly strengthened by the adaptation to the intra-bloc relations of the principle of the unity of people's power evolved in Communist constitutional practice. According to this principle all power comes from the people. Therefore, legal concepts to provide internal checks to prevent the abuse of power, either by the system of checks and balances or by the system of separation of powers, have no application in Soviet constitutionalism. Control is exercised by the people themselves, or their political leadership in the Communist Party. In a political order reflecting in all its parts the domination of the working masses there is no question of aiming for a compromise between social and political interests.

In the mechanics of the intra-bloc organizations the principle of the unity of power means that in the statutes of various common institutions there are no hard and fast rules as to the division of responsibility between the various bodies administering an intra-bloc institution. And yet the modus operandi of the various elements of any organization differs so greatly that without a strict delimitation of authority the administrative branch of government is greatly favored to exert undue influence in the management of the public affairs under its jurisdiction.

Formally, the member states of the Communist Bloc are protected from the undue influence of the intra-bloc organizations in their domestic jurisdictions by the assurance that all intra-bloc organizations are based on strict respect for the national sovereignty of the member states. The actions of intra-bloc organizations may not infringe upon the rights of the member states and their freedom to act. The communique

issued on the occasion of the establishment of the Council for Mutual Economic Aid proclaimed that membership in this organization is based on equal representation, and that the organization would not interfere in the internal affairs of its members. The decisions of the Council were to be binding only when accepted by each country concerned.[65]

And yet these rights have been infringed upon. But the infringement has not been a matter of the imposition of the majority will upon the opposing minority. Rights of individual members, and even of the majority, were exposed to a threat from the administrative mechanism of the organization, which was able to act without regard to the will of individual states or of the majority. In effect, important areas of intra-bloc cooperation were placed under a regime in which conflict of interests is resolved by administrative decision made in the name of all member nations, though virtually without their participation.

Typical of this respect is the Warsaw Treaty Organization.[66] The Treaty provided that a common force should be created under a Joint Commander, and that "for the purposes of consultations among the Parties envisaged in the present Treaty, and also for the purpose of examining questions which may arise in the operation of the Treaty, a Political Consultative Committee shall be set up, in which each of the Parties to the Treaty shall be represented by a member of its Government or by another specifically appointed representative. The Committee may set up such auxiliary bodies as may prove necessary." (Art. 6.)

Simultaneously with the signing of the Treaty the signatory powers issued a communique which set up the Joint Command and established that all general questions relating to the strengthening of defensive power and the organization of the Joint Armed Forces of the signatory states should be subject to examination by the Political Consultative Committee, which would adopt the necessary decisions.[67]

According to the same communique the Joint Command was to consist of a Soviet Marshall, a Soviet deputy minister of defense, and ministers of defense or other military leaders serving as Deputy Commanders of Chief of the Joint Armed Forces. Simultaneously a Staff of the Joint Armed Forces was established which included permanent representatives of the General Staffs of the signatory states.[68]

The work of the Warsaw Conference was completed in January, 1956, when the Consultative Committee met in Prague. The Conference decided to include the East German Forces in the joint forces of the Organization. It also decided to meet at least twice yearly, and to establish two subsidiary organizations: a standing committee for drafting recommendations concerning problems of foreign policy, and a joint secretariat made up of representatives of all the member nations of the Warsaw Treaty Organization. General of the Army Antonow was appointed Secretary General of the Organization.69/

The main feature of the new Organization was the close integration of the joint forces into the command system of the Soviet Army. The Commander-in-Chief of the joint forces was the Soviet First Deputy Minister of Defense, and his deputies were ministers of defense of the other member states, thus establishing a line of direct subordination between the Soviet Minister of Defense and the national military establishments of other member nations. Through the national ministers of defense, the Soviet Minister controls not only the national contingents of the joint force, but also the entire military establishment of the Soviet Bloc in Eastern Europe.

It could be argued that there are effective checks on the absolute power of the Soviet Minister of Defense, as the Political Consultative Committee has the power to decide upon new defense measures, and both the Joint Command and the Joint General Staff include representatives of the satellite armies. However, opposition to the orders of the Commander in a military organization is somewhat difficult to conceive. Military organizations are run according to the rules of military discipline, and not those of a diplomatic conference. Members of the Joint Command and of the Joint General Staff are subordinate officers and not representatives of their governments.

In the Political Consultative Committee the general course of business is arranged by two Soviet chief administrative officers of the Warsaw Treaty Organization, the Joint Commander, and the Secretary General. In the normal course of business all matters concerning joint defense action are reported to the Committee by the Commander of the Joint Force. He initiates the debate and proposes measures to be adopted by the Committee. He is supported by the opinions of his General Staff. In political matters, he again brings in all issues concerning foreign affairs and proposes measures and actions designed for him by his Standing Foreign Policy Committee. Even from the formal point of view matters have been arranged to make opposition difficult, particularly in view of the obvious implication inherent in the fact that the two highest officers are part of

the military establishment of the Soviet Union. Consequently, unless the Consultative Committee is spurred to action to oppose what is essentially a Soviet policy line, both administrative officers are free to act as they think proper and necessary, in all major cases under the direct instructions of the Soviet Government of which they are members.

Thus, as regards the process of decision-making, the Warsaw Treaty Organization follows a practice of long standing with respect to the organization of the joint ventures in any field of common effort in the Communist Bloc. The most outstanding examples of Soviet practice in this field were the joint companies for the exploitation of the natural resources in the satellite countries in Eastern Europe and the organizations for air transport, Danubian shipping, and the like. A facade of formal equality of the participating countries covered unlimited freedom for the Soviet manager of the company to act as he pleased, so long as his actions conformed with the interests of the Soviet partner.[70]

Vast powers of the administrative officers of the intra-bloc organizations also characterize the setup of two other important institutions of the Communist Bloc in which all twelve members of the Bloc are associated.

The Organization of the railway administrations of the twelve nations (Organizatsia Soobshchenia Zheleznykh Dorog), according to its statutes adopted in 1957, is designed to promote the transport of goods and persons over the great distances of the Euro-Asian land mass through the direct cooperation of the national railway administrations, adoption of common rules regarding international transit of goods and persons, unification of formalities, and technical improvement of railway transport.

The Organization consists of the conference of ministers of railways of the member countries, and of the International Railway Administration, which is the executive organ of the Conference. It is the duty of the executive organ to prepare for the Conference various proposals, financial, technical, and scientific, and to settle claims to various national railway administrations for losses and damage to goods in direct international transit.

According to Soviet instructions regarding presentation and settlement of such claims raised by Soviet recipients of goods, the Soviet railway administration has the obligation to settle such claims of Soviet clients unless it proves that damage occurred while the goods were in transit outside Soviet

territory. In this case the claim is submitted to the International Administration for settlement with the proper national administration.71/

It would thus seem that the duty of the International Railway Conference is exhausted when the responsibility of a railway administration for losses incurred during transit is established. Settlement of claims themselves is left to the parties concerned, either in or out of court.

A somewhat more complex mechanism to streamline possible conflicts of interest is represented by the organization of the United Institute of Nuclear Research (established in March, 1956). Its statutes were adopted in a session of all twelve members of the Sino-Soviet Bloc at their conference held in Dubna from September 20 to 23, 1956. Simultaneously, personnel rules prepared by the director of the Institute were adopted. In the following days the Scientific Council of the Institute held its first session (September 24-26, 1956) and adopted a program of scientific studies and research. Following that, the Financial Committee (September 26-27) approved the program of construction and the budget.

According to the statutes, the Institute's director, the key officer in the organization, is appointed by the Conference of the Representatives Plenipotentiary, the highest body of the Institute. The Conference gathers at least once a year, and holds extraordinary sessions when necessary. The Research Program is approved by the Scientific Council, consisting of scholars delegated by the member nations, which gathers twice a year. It also approves appointments made by the director, including those of the directors of laboratories, members of the standing scientific committee, and directors of various attached institutions, stations, etc. The bulk of scholars working in the Institute is delegated by the member nations according to a key worked out based on the financial contributions of the member nations.

The setup of the Institute is highly reminiscent of the Warsaw Treaty Organization. The Institute itself is directed by the Soviet Director. His appointment is a matter of political decision because he is the choice of the Conference of the Representatives Plenipotentiary. The Scientific Council has no means of independent control because it assembles in the normal course of events for only two short sessions yearly, and on these occasions deliberates on reports and proposals submitted by the director as worked out by the Standing Scientific Committee appointed by him and subordinate to him. The implementation of the Committee's recommendations is left in the hands of the

director, and the Council has no control over any other means necessary to give effects to its decisions inasmuch as the budget of the Institute is within the jurisdiction of the director and the Conference of the Representatives. Similarly, there is little the Council can do in the matter of the scientific policy of the Institute unless its policy is supported by the Soviet Director. It has little influence as regards the appointments to scientific positions in the Institute, because its function consists of voicing its approval of what the Director has done.

In order to have an influence on the Institute's doings, the Council would need to maintain a closer contact with its work and have the opportunity to discuss the needs, the achievements, and appropriate remedies on its own initiative, and not in infrequent meetings, with concurrent opportunity to hear the reports of the administration and to approve its actions. Should a single nation have a different point of view, it would have little opportunity to organize any action to upset the plans and the decisions of the Director. In fact, the administrative mechanism of the Institute controls its operations with little interference from its higher rungs of authority.72/

And yet it is obvious that various members of the United Institute must have different conceptions about the progress of research and different needs with respect to the uses of nuclear energy. Smaller nations, without atomic weapons or costly systems of delivery, would be rather more interested in promoting the peaceful uses of atomic energy.

The heart of the matter is that in the normal course of events the operation of the Institute depends upon the goodwill of the Soviet Union, which in exchange for the facilities it offers controls the collective efforts of scholars of other socialist nations.

VIII. PARTY DIRECTORATE OF THE BLOC

In 1947 the political alignment of Eastern European countries under Soviet leadership became also an ideological alignment. At the Conference of Nine Communist and Workers Parties held that year in Poland, leaders of the Bloc acknowledged their allegiance not only to a community of political interests, but also to the historical vision of the future and the doctrine of political action to reach the millenium forecast by the Founding Fathers of Marxism--Leninism. Ideological unity was expressed in the formation of the Cominform, which was to provide a meeting place for the leaders of the ruling Communist parties to exchange information, share experiences, and design common action.

In fact, the Cominform was never politically important. The Soviet Bloc was ruled from the center and opinions of satellite leaders had little weight with Stalin. Its usefulness was demonstrated only once, during the Soviet-Yugoslav altercation in 1949, by providing a platform for a dutiful expression of condemnation of the ideological and political heresies of the Yugoslav leadership.

After the death of Stalin the Cominform fell victim to the rapprochement with Yugoslavia, and was dissolved in April, 1955. It seemed for a while that the cooperation of the Bloc countries within the framework of the common organizations set up for the shoring up of common defenses and the integration of the Bloc countries would provide ample opportunity to coordinate political and ideological action.

However, the need for the ideological and political clearing house on the highest party level was demonstrated by the crisis of the Fall of 1956. Brutal suppression of the Hungarian revolt demonstrated Soviet military might and its will to remain in control of Eastern Europe. At the same time, however, it also isolated Soviet leadership, forcing it to seek approval of the Hungarian intervention by the Communist parties in Eastern Europe.

The meeting of the Communist leaders called in Budapest for January 1-4, 1957, was boycotted by the Poles and Yugoslavs, and the declaration signed by the parties which assembled there (January 7, 1957) marked dissension rather than unity. Polish and Yugoslav abstention demonstrated that ideological rifts were possible, and that this time they were not to be healed by casting the heretics out.

The ideological bone of contention consisted in the use of the new term, "proletarian internationalism" in the Declaration of January 7 to apply to intra-bloc relations. The declaration of October 30, 1956, issued by the Soviet Government and Party, to pacify the revolt in Hungary and Poland, stated that relations between the members of the socialist camp are based on the principles of "peaceful co-existence and brotherly cooperation," which was taken to mean that the Soviet Union would not interfere in the internal affairs of either of the two countries. The declaration was followed by the quelling of the Hungarian revolt by Soviet military might. The new term which appeared in the January 7 Declaration was to give approval of the Soviet action, as "proletarian internationalism," which until then meant ideological support for the working masses and mutual assistance of the Communist parties, but was now understood to qualify seriously the doctrine of non-intervention, which was the principle of peaceful co-existence. The new ideological twist was to signify that the principle of non-intervention was not violated if one socialist state supported the regime of another in its internal fight with reaction. As the Declaration of January 7, 1957, stated:

> Views were exchanged on the Soviet Union's declaration of October 30, 1956, and it was the unanimous conclusion that this declaration is entirely in accordance with the interests of strengthening friendly relations between the socialist countries through adherence to the Leninist principles of equality and respect for the interests of every people, non-interference in each other's domestic affairs, and proletarian internationalism.[73]

However, Polish absence from the Budapest meeting left the matter quite open. Chou en-Lai conferred with the Poles and elicited from them a declaration of solidarity with the Communist movement, but failed to draw them closer to the Soviet line as regards "proletarian internationalism."[74]

The period which followed marked increased independence of the Polish regime in the field of international relations. Continued cordiality with the Yugoslavs, mounting criticism of the Polish attitude from the capitals of other satellite countries, and Polish action at the U.N. meetings as regards the military neutralization of Central Europe all indicated tensions within the Bloc. In November, 1957, the twelve

ruling parties of the Bloc assembled in Moscow, including the Polish leadership, and after an ideological fight a declaration was issued which marked defeat for the Polish position. It stated that the members of the Socialist Commonwealth are linked by the struggle for

> . . . elimination of national oppression and the establishment of equality and fraternal friendship among peoples; defense of the achievements of socialism against the encroachments by external and internal enemies; solidarity of the working class to give assistance to the working classes of other countries--proletarian internationalism.75/

Although the Polish position was abandoned, the November declaration became a charter of the new intra-bloc body which was to provide ideological leadership for the entire Soviet Bloc--the conference of the leaders of the ruling communist and workers parties of the Socialist Commonwealth.

In addition to settling ideological and political issues of the gravest character, exemplified by Polish opposition to the sanctioning of Soviet intervention in Hungary, the meetings of the leaders are a forum for discussion of all important issues on which there is difference of opinion among the members of the Bloc.

An important matter which seems to call for a good deal of attention on the highest level is the question of common economic policy for the Bloc. After some preliminary studies in the beginning of 1958, the conference of leaders assembled in Moscow (May 20-23) and adopted a new policy with respect to the program of economic integration of the Bloc. It was decided to embark on a vast program of economic reorganization through gradual implementation of the plan for the "international socialist division of labor and rational specialization and coordination of production," which finally ended with a recommendation to work out a long-term plan for the regional development of the basic branches of industry.76/ In 1960 party leaders again assembled in Moscow to discuss the problem of agricultural policies and food supply.77/

In 1961 (August 5) the matter of the German Peace Treaty was discussed. The communique issued at this conference contained the following directive:

> The Conference instructed the competent government authorities to prepare and to take all necessary measures in the field of international relations and economics which would assure the signing of the peace treaty with the Germans, and enforcement of its provisions, in particular those which concern West Berlin as a free city.[78]

Conferences of the Communist leadership of the Bloc constitute an important channel for discussion of general situations, attitudes and aims as well as of concrete issues which divide members of the Bloc. This ideological unity plays to a great degree the same role in intra-bloc relations as does the attitude of governments in the free world toward international law, which serves as a guage of the ethical quality of governmental action.

A Soviet professor has seen in the periodic conferences of the party leaders a peculiar feature distinguishing relations between socialist countries from those in the international community at large. Relations between the states, his argument runs, depend on the class character of the states. Intra-bloc relations are determined by the fact that members of the Bloc are socialist states. Their international policies differ from those of the capitalist states. International policies are dictated by internal policies. Inasmuch as the internal policy of the socialist states aims at the elimination of economic exploitation, so in international relations socialist states respect the independence and sovereignty of other nations. Thus relations between socialist states are relations of the highest type, and international law of the Communist Bloc is law of a higher type.[79]

International relations of the socialist states are governed by "proletarian internationalism" which in practical terms means that support is provided various Communist countries for the realization of their aims and for the Communist revolution in their respective countries.

Once the system of socialist states emerged, Soviet professors explain, the principle of proletarian internationalism was restyled as "socialist internationalism" in order to encompass also the cooperation between the ruling parties and the governments of socialist countries as regards the construction of the Communist social and economic order.

Professor Korovin, one of the chief supporters of the new doctrine, takes issue with those lawyers who argue that relations between all countries, capitalist and socialist alike, are based on the principle of peaceful coexistence without regard for their internal order. Rules of international law in relations between the socialist countries, Professor Korovin argues, acquire a different content. In the international community at large sovereignty means freedom from enslavement by foreign capital. In international relations of the socialist states sovereignty has a different meaning, as a socialist country is unable to enslave another country. It means mutual support between the sovereign nations. To support his thesis he invokes the Soviet-Hungarian declaration of March 28, 1957, which states that the governments of both countries are equally concerned with the welfare of the working masses of their countries. For the Soviet Union recognition of national sovereignty of a nation means a concrete obligation to render to the new state real assistance to achieve political and economic independence.80/

Most important contributions to the content of the new international law come from the conferences and decisions of the leaders of the Communist parties of the Bloc. They formulate policies of the countries they rule, and thus also influence their relations with other countries.81/ At the present moment, Professor Korovin tells us, two systems of international law coexist. One exists between the capitalist and socialist states, which determines peaceful coexistence between states with different social and economic orders. This law is influenced by the progressive principles of law, which are the result of the practice of socialist states. Simultaneously, another system of international law--that governing relations between the socialist states--is in force. One day it will be the international law of the entire international community, which will consist of socialist states only.

So long as socialist and capitalist states coexist, full incorporation of the entire body of socialist international law into the law of the international community at large is impossible, and relations between the various countries with different social origins must differ as to the degree of cooperation and mutual trust.82/

Soviet doctrine on the special character of intra-bloc relations may make it impossible to adapt practices between the Communist countries to their relations with the free world. Indeed it is difficult not to recognize the strength of this argument, if on somewhat different grounds. Intra-bloc dispute settling developed in an international setup dominated by the overwhelming might of a great power, which determines all essential aspects of intra-bloc intercourse. International economic or military cooperation within the Bloc is conditioned by Russian resources, the nature of Soviet economic organization, and by the size of the Soviet military establishment.

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75. Izvestia, Nov. 23, 1957. Cf. Brzezinski, The Soviet Bloc Unity and Conflict (New York: 1961), 269-303.

76. Pravda, Izvestia, May 25, 1958. Cf. Rozanski, "O aktualnej dzialanonosci Rady Wzajomnej Pomocy Gospodarczej," Handel Zagraniczny, 1961, 247-251.

77. Pravda, Feb. 3, 1960.

78. "Polski Institut Spraw Miedzynarodowych," 17 Zbior dokumentow (1962), No. 8, 946.

79. Tunkin, "Sorok let sosushchestvovania i mezhdunarodnoe pravo," Sov. Ezh. Mezhd. Prava, 1958, 38.

80. Korovin Osnovnye problemi sovrennykh mezhdunarodnykh otnoshenii (Moscow: 1959), 57, 60-61, 65; idem, "Proletarskii internatsionalism i mezhdunarodnoe pravo," Sov. Ezh. Mezhd. Prava, 1958, 50-69; and idem, "Zajavlenie soveshchania predstavitelej kommunisticheskikh i rabochikh partii i zadachi nauki mezhdunarodnogo prava," Vestnik Moskovskogo Universiteta, Seria Prava, 1961, No. 3, 63-72.

81. Idem, op. cit., note 80, 70, "Osnovnye problemi ...."

82. Idem, "Zajavlenie soveshchania . . ." note 90. Cf. Gasteyger, op. cit., note 74, 39-50.

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SUPPLEMENT

AREAS OF TENSION IN THE SOVIET BLOC

This report contains summaries of some of the most important disputes between the countries of the Soviet Bloc. By no means is it a complete account. The selection was dictated by the availability of material which permitted the discernment of the essence of the conflict between the parties, the method of settlement, and the solution arrived at. Some of the case material deals with unsolved conflicts in order to illustrate political conditions causing the flow or ebb of controversy.

The cases included in this report concern territorial disputes, national minorities and exchanges of population, frontier incidents, Danubian administration, and finally, economic cooperation between the members of the Soviet Bloc. The most general conclusion which suggests itself in the light of this material is that settlement of conflicts, even between the most embittered opponents, is primarily dictated by the general attitude of the Soviet government as regards the issues at stake and the parties to the dispute. This is certainly reflected in all territorial solutions; cases involving Yugoslavia also serve as prime examples of Soviet influence in this connection. Those not too frequent cases when a member of the Soviet Bloc is able to obtain a concession from the Soviet Union seem to prove that this is possible in exceptional situations only, when concessions on the part of the Soviet government are necessitated by a sharp crisis in Soviet-satellite relations.

It should be noted that this report gives no account of the Polish territorial settlement as regards either Poland's Eastern or Western frontiers, as the decision regarding the annexation of Polish Eastern provinces by the Soviet Union and Poland's compensation at German expense was made by the Big Four powers without Polish or German acquiescence. The same consideration applies to Transylvania, which was awarded to Rumania.

The Albanian-Yugoslav dispute involving the joint companies in Albania is typical of similar undertakings involving Soviet economic ventures in Yugoslavia, East Germany, Hungary, Rumania, and Bulgaria. Some of these companies survive until the present day; some of them were dissolved, and their assets transferred to the governments of the satellite states. Two such companies handling Danubian shipping and air transport, organized with Soviet participation in

Yugoslavia, were dissolved in 1950. However, in contrast with the Albanian case, operative reasons for dissolution, including possible conflict of interests of the parties involved, are shrouded in secrecy, making it impossible to ascertain the nature of the conflicts of interest, mutual claims of the participating governments, and the actual solution of the conflict.

LIST OF TENSION AREAS DISCUSSED

Territorial, Minority, Repatriation, and Border Problems

BULGARIA-RUMANIA

Southern Dobrudja

BULGARIA-YUGOSLAVIA

Macedonia

CZECHOSLOVAKIA-POLAND

Teschen Silesia

ALBANIA-YUGOSLAVIA

Kosova-Metohija District

CZECHOSLOVAKIA-HUNGARY

Magyar minority in Czechoslovakia and Slovak minority in Hungary

POLAND-USSR

Exchange of populations and repatriation of Polish citizens from the USSR

YUGOSLAVIA-ALBANIA
" -BULGARIA
" -HUNGARY
" -RUMANIA

Border Incidents

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YUGOSLAVIA-RUMANIA

Danube Iron Gate Sector

POLAND-YUGOSLAVIA

Settlement of financial claims

ALBANIA-YUGOSLAVIA

Dissolution of Joint Companies

BULGARIA-RUMANIA

Southern Dobrudja

The German defeat in World War II has put a question mark over the settlement of territorial disputes arrived at while Central and Eastern Europe were under German control, particularly when both parties to the dispute were German allies. After World War I Rumania was given Southern Dobrudja, a province with a large Bulgarian population. One of the first acts of the German government, after it gained control of Eastern and Central Europe in the initial years of World War II, was to force the Rumanian government to cede this territory to Bulgaria by the Treaty of Craiova of September 9, 1940.

In visible support of the Bulgarian claim to Dobrudja, Tass, the Soviet press agency (November 25, 1945), publicized the statement of Bulgarian Prime Minister Kimon Georgieff to the effect that the Bulgarian government considered the question of Southern Dobrudja settled. The matter was left undecided, and was not touched upon in the peace treaties. The official statement by the two governments concerned with respect to the question of Southern Dobrudja was issued only after the Communist Party had secured control in both countries. On July 17, 1947, the two governments declared that the question of Southern Dobrudja was settled by the 1940 treaty and that Bulgaria is in legal possession of that province (Pravda, July 19, 1947).

BULGARIA-YUGOSLAVIA

Macedonia

Macedonia, one of the explosive territorial and ethnic issues in the Balkan area, involves territories of Yugoslavia, Bulgaria, and Greece. Bulgaria and Serbia, and later Yugoslavia, entertained ambitions to unite the entire Macedonian area within their frontiers. Greece also endeavored to assimilate Macedonians within her borders, as since time immemorial Macedonians have lived under the influence of Hellenic culture. Finally, unification of Macedonia began to play an important role as a feature of a general plan of Balkan settlement by means of the federation of all interested nations, with Macedonia included in the proposed federation as an autonomous component part.

Immediately after World War II Macedonia figured importantly in the plans of the Communist leaders in the Balkans. The October 5, 1944, agreement between Bulgaria and Yugoslavia confirmed the pre-war frontiers, returning the bulk of Macedonia to Yugoslavia. The leaders of the two countries also stated that the division of Macedonia must end, and that Macedonians must be given the opportunity to determine their future for themselves. On November 25, 1945, the Bulgarian government officially declared that it favored the solution of the Macedonian question by uniting all of Macedonia as a member of the Yugoslav Federation. (Pravda, November 25, 1945.)

The pattern of things to come became clear after the conference between Bulgarian and Yugoslav leaders in Bled (August 1, 1947), which outlined a gradual integration of the two countries as a nucleus for a Balkan federation. Agreements concluded then provided that Bulgarian Macedonia (Pirin) was to be united with Yugoslav Macedonia, while some Yugoslav territory would go to Bulgaria (The World Today, October, 1949).

The realization of the Balkan federation plans was predicated upon the success of the communist revolt in Greece, as only then could the whole of Macedonia be organized as a member state of the Balkan federation.

Ambitions of the Balkan Communist leadership were frustrated by the Soviet-Yugoslav dispute and Yugoslavia's defection from the Cominform. Bulgarian support for the plan of Macedonian unification within the Yugoslav Federal Republic was withdrawn (decision of the Central Committee of the Bulgarian Communist Party, Rabotnichesko Delo, July 12, 1948). The Bulgarian and Yugoslav press then began a campaign of mutual recrimination regarding nationalistic policies in the Bulgarian and Yugoslav Macedonias, which continues intermittently at the present time. Discussion of Macedonian issues by the Bulgarians and Yugoslavs is indicative of the nature of the mutual relations and of the Yugoslav standing in the Communist world.

CZECHOSLOVAKIA-POLAND

Teschen Silesia

Teschen Silesia has been the chief issue dividing Poland and Czechoslovakia. Economically, the area tended towards Czechoslovakia which depended upon the rich coal deposits (coking coal, important for steel production) in that region; ethnically, it leaned towards Poland. After the collapse of Austria in 1918 the local population established an interim regime, consisting of a Czech-Polish Council, in charge of local administration until the plebiscite which was to decide its future. While Poles were engaged in the war with Bolshevik Russia and Soviet troops stood at the gates of Warsaw, the Czechs seized the disputed area, and some time later the Conference of Ambassadors of the Big Powers (France, Italy, and Great Britain), which under the Peace Treaties of 1919 was to settle disputes arising from the new political configuration of Europe, gave the city of Teschen to Poland and the coal mines to Czechoslovakia. In 1938, while Hitler's troops marched into Czechoslovakia, Poland forced the weakened Czech government to cede the entire area to Poland.

World War II opened the Teschen problem again. Initially the Czech and Polish governments in exile hoped to solve the problem by creating a Czech and Polish federation, a solution which appeared unacceptable to the Soviet Union. In August, 1942, after a trip to Moscow Czech President Benes came out with a declaration that Czechoslovakia would claim Teschen Silesia and would not recognize any territorial changes which occurred after Munich (London Times, Aug. 9, 1942).

In June, 1945, Soviet troops liberated Teschen Silesia, handed the administration over to Czech authorities, and permitted Czech Army units to occupy the area. Under cover of Soviet occupation the Czech authorities began to deport Poles from the rural and mining areas, which caused a protest from the Polish interim regime and resulted in the withdrawal of Czech troops from the city of Teschen and the halting of the deportations. On June 20, 1945, Polish troops reoccupied the city of Teschen, thus returning the situation to that of the pre-Munich days. A few days later the Soviet government offered to mediate the Czechoslovakia-Poland dispute. Polish reaction was favorable; the Czechs, however, remained hostile to the idea of negotiation. Almost simultaneously with the Soviet offer and Polish acceptance Czechoslovak Vice-Premier Fierlinger, while on an official visit in Moscow, rejected Polish claims to Teschen Silesia in most preemptory terms, by which it was understood that Czechoslovakia's position was supported by the Soviet Union (London Times, June 25 and July 11, 1945; Pravda, June 24, and July 10, 1945).

Polish-Czech controversy over territories was broadened by the Czech demand for some of the German territory which had been awarded to Poland as compensation for Poland's Eastern provinces which went to Russia (Neue Zuricher Zeitung, September 15, 1945).

The Czechoslovak official position was followed by a formal note of the Polish government (January 7, 1946) containing a proposal to discuss various mutual problems, including territorial demands (London Times, January 8, 1946). However, according to the press, Polish-Czechoslovak pour-parlers broke down (March 4, 1946), and on March 16 (London Times) the Czechoslovak government, while maintaining its position regarding Teschen Silesia, placed on the agenda its formal claim for five counties in the Glatz area of the so-called Polish Recovered Territories. This was followed by a memorandum to the foreign ministers conference, through Molotov, then Soviet Foreign Minister (May 1, 1946). This step caused a formal Polish protest.

Polish-Czechoslovak territorial claims and counter-claims were never resolved formally. However, in the course of 1947 a visible improvement in relations between the two countries took place, leading to the signing of a Polish-Czech Friendship and Mutual Assistance Treaty following the pattern established by similar agreements concluded by the Soviet government with other countries in Eastern Europe. In the additional protocol the signatories stipulated that all territorial disputes between them should be solved in the course of two years by direct negotiations, and that the rights of Polish and Czechoslovak minorities should be fully restored on the basis of full equality with the rest of the population (London Times, Neue Zuricher Zeitung, March 10, 11, 1947).

On July 8, 1947, a joint Polish-Czechoslovak communique stated that the rights of their minorities are fully respected.

ALBANIA-YUGOSLAVIA

Kosovo-Metohija District

During World War II Tito's partisans extended their assistance to the Albanian underground movement. After the war the Yugoslav government offered its assistance and protection to the Albanian regime. In view of the plans for Balkan federation there was no room in the relations between the two countries for tension and disagreement in connection with the presence in Yugoslavia of a large Albanian minority in the Kosovo-Metohija District. Yugoslav defection from the Cominform in 1948 immediately affected Albania, which was under Yugoslav protection with its economy and military forces controlled largely by the Yugoslavs and the Titoist faction of the Albanian Communist Party. After 1948, however, Albania was first to break relations with Tito and to remove all sign of dependence on Yugoslavia. It also raised claims to the Albanian districts in Yugoslavia (note of November 23, 1949), charging Tito's regime with imperialistic policy as regards Albania and suppression of the Albanian minority in Yugoslavia.

CZECHOSLOVAKIA-HUNGARY

Magyar minority in Czechoslovakia and Slovak minority in Hungary

The downfall of the Czechoslovak Republic in 1948 was to a large degree due to the open revolt of the German, Hungarian, and Polish minorities seeking to unite with Germany, Hungary, and Poland. The Czechoslovak regime sought to strengthen the reconstituted Czechoslovak state by expelling the Germans and the Magyars. While removal of the Sudeten Germans was achieved without difficulty, the Czechoslovaks found themselves unable to expel the Poles from Teschen Silesia and have found it difficult to proceed with the removal of Magyars from southern Slovakia without some kind of agreement with the Hungarian government. In February, 1946, the two governments initiated negotiations regarding the exchange of populations, as the Hungarian government claimed that it was unable to accommodate and resettle Hungarian expellees from Czechoslovakia unless room was made for them by removing the Slovak population settled in Hungarian lands (London Times, Feb. 13, 1946). Protracted negotiations brought no results, and the two governments proceeded unilaterally with the removal of their minorities until the February, 1948, coup d'etat in Czechoslovakia gave full control to the Communist Party. At that time Hungary also had a Communist government, and on August 27, 1948, the two governments concluded a final agreement regarding the exchange of populations, stipulating that the remaining minorities--Slovak in Hungary and Hungarian in Czechoslovakia--should enjoy equal rights with other classes of Hungarian and Czechoslovak citizens. In due course a Czechoslovak decree (Oct. 26, 1948) repealed earlier legislation concerning the deprivation of nationality, and another decree (December 11, 1948) permitted the creation of social and political organizations to represent the Hungarian minority in Czechoslovakia. Almost simultaneously the Hungarian government enacted a law (December 16, 1948) which assured full citizen's rights to the members of the Slovak minority in Hungary.

POLAND-USSR

Exchange of populations and repatriation of Polish citizens from the USSR

Transfer of the Eastern provinces of Poland to the Soviet Union was followed by a series of treaties concerning the exchange of populations, in order to establish clear ethnic lines between Poland and the neighboring Soviet republics. On September 9, 1944, two such treaties were concluded between Poland and the Ukrainian and Byelorussian Soviet Republics. On September 21, 1944, a similar treaty was concluded with the Lithuanian Soviet Republic. The following year (July 6, 1945) a comparable treaty was concluded with the Soviet Union regarding the transfer of Poles scattered throughout the vast territories of the Soviet Union. Those various treaties took account of the fact that the territories acquired by the Soviet Union from Poland went to Lithuania, Byelorussia, and the Ukraine, member republics of the Soviet Union, while at the same time those Polish citizens who were deported from the Eastern provinces of Poland following their occupation under the Hitler-Stalin agreement of 1939 were scattered through various other parts of the Soviet Union.

In spite of the fairly broad terminology of the treaties concerning various categories of persons who could claim the right of repatriation, Soviet authorities who handled the requests for repatriation restricted the right to ethnic Poles only, excluding all members of Ukrainian, Byelorussian, or Lithuanian nationality, as well as Jews, while according repatriation to those Poles who had never in the past been in possession of Polish citizenship. Furthermore, repatriation was not applied to those Poles who were deported by Soviet troops in 1944-1946.

In the wake of the Fall 1956 Polish revolt the new regime which succeeded the discredited Stalinist faction of the Communist Party was able to force the Soviet government to revise its position as regards the repatriation of Polish citizens still in the Soviet Union. On October 25, 1956, the Soviet government agreed preliminarily to release of Polish prisoners deported to Russia after Poland's liberation, including some 3,000 officers of the underground army. On November 16, 1956, a comprehensive agreement was reached which provided that in addition to those who were unable to avail themselves of the opportunity for repatriation under previous agreements and those who did not meet the

requirements for the earlier agreements, all those who had families in Poland would be included, irrespective of the ethnic principle (Pravda, Oct. 26, 1956 and Nov. 19, 1956).

The characteristic feature of the agreement of October 25, 1956, was that the Soviet government agreed to pay compensation for those who were forcibly deported from Poland after her liberation. There is no information concerning the procedure to be followed in the settlement of such claims or whether any such damages were, in fact, paid.

YUGOSLAVIA-ALBANIA
" -BULGARIA
" -HUNGARY
" -RUMANIA

Border Incidents

The death of Stalin relieved the pressure of the Soviet Bloc upon the Yugoslav regime, improving Yugoslavia's relations with her neighbors and leading in the second half of 1953 to the settlement of mutual claims arising out of border incidents staged on Yugoslav frontiers. Yugoslav invitations to settle mutual claims in this connection were accepted in June and July, 1953. Mixed Frontier Commissions to settle the claims were established, and sessions settling various incidents began in the summer of 1953. In addition, on December 14, 1953, Albania and Yugoslavia concluded two agreements concerning the re-erection of frontier markers along their borders and another on measures regarding prevention and settlement of future frontier incidents.

YUGOSLAVIA-RUMANIA

Danube Iron Gate Sector

Under the terms of the 1948 Danubian Convention which gave the exclusive control of Danubian navigation to the riparian states, representatives of the member states of the Danubian Commission were to participate in various bodies established under this Convention. However, at the first meeting of the Danubian Commission this principle was not respected and the Yugoslavs, who were at that time involved in the ideological controversy with the Soviet Communist Party, were totally excluded from the Danubian administrative bodies. Furthermore, the Convention having provided for special administrations for certain sections of the Danube, Yugoslavs were experiencing difficulties in concluding a satisfactory convention concerning the administration of the Iron Gate sector of the River, which was to be the responsibility of the Yugoslav and Rumanian governments. After the death of Stalin the Danubian Commission reversed its position, and Yugoslav representatives were admitted to various posts within the Danubian administration. In addition, on May 15, 1953, Rumania and Yugoslavia concluded a convention concerning a joint administration of the Iron Gate sector of the Danube and of the riparian installations.

POLAND-YUGOSLAVIA

Settlement of financial claims

Yugoslavia's expulsion in 1948 from the Cominform affected Polish-Yugoslav economic cooperation and trade relations, reducing the exchange of goods and of services between the two countries to a mere trickle. Under Soviet pressure the Polish government adopted a deliberate policy of limiting the delivery of vital goods and factory equipment to Yugoslavia. The Yugoslavs retaliated, and in turn adopted on their part various restrictions as regards their trade with Poland. In 1955 Yugoslavia's position in the Soviet Bloc improved and a Polish-Yugoslav Convention of November 14, 1955, provided for the settlement of mutual financial claims for the 1945-1955 period.

ALBANIA-YUGOSLAVIA

Dissolution of Joint Companies

On July 1, 1946, Albania and Yugoslavia concluded a treaty of economic cooperation, and detailed conventions implementing the provisions of this treaty were signed on November 26, 1946. These conventions provided for the creation of six Albanian-Yugoslav joint stock companies to run for 30 years:

Railroad construction in Albania;
Oil prospecting and exploitation;
Electrification;
Export-Import;
Mining; and the
Yugoslav-Albanian Bank.

In December, 1946, the two parties signed a 30-year agreement to coordinate their economic plans and to establish a customs union (Mirovoe Khoziaistvo i Mirovaia Politika, Koniunkturnii Bulletin, 1947, no. 7).

After Yugoslavia's breach with the Cominform, both countries agreed (November, 1949) to dissolve these companies, each withdrawing its assets (Borba, November 23, 1949).